

701 KAR 8:030. Charter school appeal process.

RELATES TO: KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 13B.170, 160.1598

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1598 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to appeal a decision of an authorizer denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or non-renewing a charter contract. This administrative regulation establishes the requirements for the appeal process.

Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors filing the appeal of an authorizer's decision denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract.

(2) "Applicant" is defined by KRS 160.1590(3).

(3) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(13).

(4) "Charter" means charter contract.

(5) "Charter application" is defined by KRS 160.1590(4).

(6) "Charter contract" or "contract" is defined by KRS 160.1590(5).

(7) "Charter school" means a public charter school.

(8) "Charter school board of directors" is defined by KRS 160.1590(6).

(9) "Days" means calendar days calculated pursuant to KRS 446.030.

(10) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(11) "Local school district" is defined by KRS 160.1590(10).

(12) "Notice" means written notice.

(13) "Public charter school" is defined by KRS 160.1590(12).

(14) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 through 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(15) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 through 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

Section 2. Policies and Procedures. The authorizer shall create and publish on its website policies and procedures for its implementation of KRS 160.1595 and 160.1598 as established in subsections (1) through (5) of this section. The authorizer shall include in its policies and procedures:

(1) A rubric for its evaluation of a charter application and its rubric for evaluation of charter contract performance for renewal pursuant to KRS 160.1598;

(2) The circumstances that shall result in automatic revocation or nonrenewal of a charter contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(3) The requirements and timeline for timely notification of the prospect of revocation or non-renewal of the charter contract and of the reasons for the possible closure;

(4) The reasonable deadline and requirements for a charter school's opportunity to respond to the authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

(5) The requirements for appeal of an authorizer decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school.

Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school to the commissioner of education, to receive the appeal on behalf of the Kentucky Board of Education, as established in paragraphs (a) through (d) of this subsection.

(a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or applicant of the decision to deny a charter application or charter contract amendment request, to impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract.

(b) The appeal shall include the name, phone number, mailing address, and email address of the contact for the appellant and any legal counsel.

(c) The appeal shall include a statement from the appellant whether there is a request for a hearing, and whether the hearing is requested to be held in the local school district in which the charter school lies or would lie.

(d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional documentation.

(2) The Kentucky Board of Education shall affirm the decision of the authorizer based on the appellant's failure to timely file the appeal, pursuant to KRS 160.1595(2) and subsection (1)(a) of this section, and may affirm the decision of the authorizer based on the failure of an appellant to meet any of the other deadlines of this administrative regulation or the hearing process.

(3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of education on behalf of the Kentucky Board of Education shall provide notice to the appellant and the authorizer acknowledging receipt of the appeal, and:

(a) If a hearing is requested in the appeal, the commissioner of education shall designate a hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing before the Kentucky Board of Education on the appeal, and to set the location of the public hearing; or

(b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a hearing by providing written notice of its waiver to the commissioner of education or to any previously appointed hearing officer, the hearing officer shall set the schedule for written pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a hearing.

(4) The written decision of the Kentucky Board of Education shall be issued no later than seven (7) days after the conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a).

Section 4. Emergency Action. Emergency action taken by the authorizer pursuant to KRS 160.1598(7) shall be taken in accordance with KRS 13B.125.

Section 5. Automatic Revocation or Nonrenewal. The Kentucky Board of Education shall affirm revocation or nonrenewal of a charter school for whom the commissioner of education has determined a member of the charter school board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in the performance framework of the charter contract or the state accountability system after:

(1) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing before the Kentucky Board of Education that a member of the charter school board of directors, or an education service provider at the direction of a member of the charter school board of directors, or an employee at the direction of a member of the charter school board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

- a. The performance framework of the charter contract; or
- b. The state accountability system; or

(2) The charter school board of directors waives its right to a KRS Chapter 13B hearing under this section.

Section 6. Incorporation by Reference. (1) "Notice of Appeal", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5). (44 Ky.R. 1185, 1561, 1843; eff. 3-9-2018.)